

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SRC LABS, LLC, et al.,

CASE NO. C18-0317JLR

Plaintiffs,

V.

AMAZON WEB SERVICES, INC.,
et al.,

ORDER STAYING CASE
PENDING *INTER PARTES*
REVIEW

Defendants.

I. BACKGROUND

Before the court is the parties' joint status report. (11/27/18 JSR (Dkt. # 121).)

Two of the four patents-at-issue in this case—U.S. Patent Nos. 7,225,324 (“the ’324 patent”), and 7,620,800 (“the ’800 patent”)¹—are also asserted in a related matter before

¹ U.S. Patent No. 6,434,687 (“the ‘687 patent”) was previously at issue in this case. (See 5/10/18 JSR (Dkt. # 93) at 5; Compl. (Dkt. # 1) ¶ 1.) In the parties’ November 27, 2018, joint status report, they represent that “SRC no longer asserts against Amazon the ‘687 patent, which was originally asserted in the complaint.” (11/27/18 JSR at 2.)

1 this court, *SRC Labs, LLC v. Microsoft Corporation*, No. C18-0321JLR (W.D. Wash.).
2 (See 5/10/18 JSR at 5.) Because of this overlap, the court consolidated this matter with
3 *SRC Labs, LLC v. Microsoft Corporation*, No. C18-0321JLR (W.D. Wash.) for purposes
4 of the *Markman* hearing and *Markman*-related pretrial matters. (See 5/22/18 Min. Order
5 (Dkt. # 96); Sched. Order (Dkt. # 95).) The court scheduled the consolidated *Markman*
6 hearing for December 20-21, 2018. (Sched. Order at 2.)

7 On November 20, 2018, the court entered an order staying *SRC Labs, LLC v.*
8 *Microsoft Corporation*, No. C18-0321JLR (W.D. Wash.) pending the U.S. Patent and
9 Trademark Office’s (“PTO”) decision on Microsoft Corporation’s (“Microsoft”) 10 *inter*
10 *partes* review (“IPR”) petitions. See *Microsoft Corporation*, No. C18-0321JLR, Dkt.
11 # 139 at 15-16. Certain of Microsoft’s IPR petitions relate to the ’324 patent and the ’800
12 patent at issue in this case. See *id.*, Dkt. # 117 at 6. Thus, on November 20, 2018, the
13 court ordered the parties to show cause why this matter should not be stayed in light of
14 the court’s order staying *SRC Labs, LLC v. Microsoft Corporation*, No. C18-0321JLR
15 (W.D. Wash.). (See Order (Dkt. # 119) at 2.)

16 In the parties’ response to the order, they represent that two additional IPR
17 petitions were filed—one by Defendants Amazon Web Services, Inc., Amazon.com, Inc.,
18 and VADATA Inc., and one by Xilinx, Inc.—that relate to the two other patents that are
19 at issue in this case, U.S. Patent Nos. 7,149,867 (“the ’867 patent”) and 9,153,311 (“the
20 ’311 patent”). (11/27/18 JSR at 2; *see also* Compl. ¶ 1.) In total, there are eight IPR
21 petitions that relate to the patents asserted in this case. (11/27/18 JSR at 2.) The parties
22 additionally state in their joint status report:

1 In the interest of efficiency, the parties respectfully submit that this case
2 should be stayed at least until the resolution of each of the eight pending IPR
3 petitions relating to the currently asserted patents in this case, including those
4 filed by Amazon and Xilinx, or until the date the stay is lifted in the Microsoft
5 Litigation, whichever is later. For the reasons set forth in the Court's Order
6 staying the Microsoft Litigation, such a stay will simplify the issues and trial.
7 Amazon anticipates that depending on the outcomes of the pending IPRs, a
8 stay may need to continue until the final dispositions of the IPR proceedings,
9 including appeals and any remands.

10 (Id. at 2-3.)

11 II. ANALYSIS

12 The court has the authority to stay this case pending the outcome of an IPR
13 petition. *See Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1426-27 (Fed. Cir. 1988); *Wre-Hol*
14 *v. Pharos Sci. & Applications*, No. C09-1642MJP, 2010 WL 2985685, at *2 (W.D. Wash.
15 July 23, 2010); *DSS Tech. Mgmt., Inc. v. Apple, Inc.*, No. 14-cv-05330-HSG, 2015 WL
16 1967878, at *2 (N.D. Cal. May 1, 2015). To determine whether to grant such a stay, the
17 court considers (1) whether a stay will simplify the court proceedings; (2) the stage of the
18 case; and (3) whether a stay will unduly prejudice or present a clear tactical disadvantage
19 to the non-moving party. *Pac. Bioscience Labs., Inc. v. Pretika Corp.*, 760 F. Supp. 2d
20 1061, 1063 (W.D. Wash. 2011). The court applies this “three-factor framework from
21 *Pacific Biosciences* regardless of whether an IPR petition is pending or has been
22 granted.” *See Nat'l Prods., Inc. v. Akron Res., Inc.*, No. 15-1984JLR (W.D. Wash.), Dkt. # 66 at 6 (citations omitted). Whether to grant a stay falls within the court’s discretion.
23 *Drink Tanks Corp. v. GrowlerWerks, Inc.*, No. 3:16-cv-410-SI, 2016 WL 3844209, at *2
24 (D. Or. July 15, 2016) (citing *CANVS Corp. v. United States*, 118 Fed. Cl. 587, 591
25 (2014)). Here, two factors favor granting the stay, and one factor is neutral.

1 First, in light of the number of IPR petitions that are before the PTO, the court
2 finds that a stay will likely simplify these proceedings. *See, e.g., Microsoft Corporation,*
3 No. C18-0321JLR, Dkt. # 139 at 5-8 (discussing PTO statistics, and determining that
4 “there are significant odds that 10 pre-institution IPR petitions will substantially simplify
5 this case.”). This factor therefore weighs in favor of a stay.

6 Second, regarding the stage of the proceedings: On the one hand, the parties have
7 already engaged in discovery and submitted briefing and claim construction charts
8 relating to the *Markman* hearing. (*See* Sched. Order at 1; *see also* Dkt.) On the other
9 hand, the *Markman* hearing has not yet occurred and trial is not until November 4, 2019.
10 (*See* Sched. Order at 1-2.) The court therefore finds that this factor is neutral. *Cf. Pac.*
11 *Bioscience*, 760 F. Supp. 2d at 1063, 1066 (finding that the stage of the case weighed in
12 favor of granting a stay where discovery was “far from complete,” the *Markman* hearing
13 had not occurred, the parties had not submitted claim construction briefs, and trial was a
14 year away).

15 Third, the court finds that a stay will not unduly prejudice either party; both parties
16 stipulate that a stay is appropriate. (11/27/18 JSR at 2-3.) Thus, this factor weighs in
17 favor of stay.

18 In sum, two of the three factors weigh in favor of a stay, and one is neutral.
19 Therefore, the court finds that a stay pending resolution of the eight IPR petitions that

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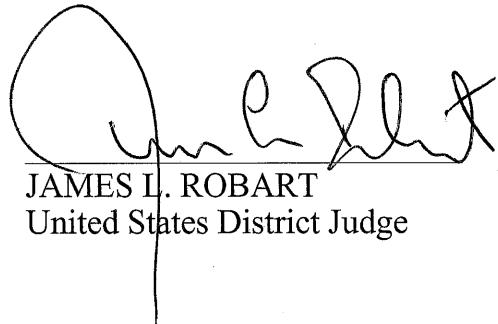
22 //

1 relate to the '324 patent, the '800 patent, the '867 patent, and the '311 patent is
2 appropriate.²

3 **III. CONCLUSION**

4 For the foregoing reasons, the court STAYS this case pending the PTO's decisions
5 on the eight IPR petitions that relate to the '324 patent, the '800 patent, the '867 patent,
6 and the '311 patent. The court also VACATES all case deadlines that remain as of the
7 date of this order, and ORDERS the parties to file a joint status report regarding the status
8 of the eight IPR petitions within seven (7) days of receiving decisions on all eight
9 petitions from the PTO or on May 1, 2019, whichever occurs first.

10 Dated this 28 day of November, 2018.



11
12 JAMES L. ROBART
United States District Judge
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18 ² The parties ask the court to stay this case "until the resolution of each of the eight
19 pending IPR petitions . . . or until the date the stay is lifted in [SRC Labs, LLC v. Microsoft
20 Corporation, No. C18-0321JLR (W.D. Wash.)], whichever is later." (11/27/18 JSR at 2.) If the
21 court conditions the stay in this case on the stay in SRC Labs, LLC v. Microsoft Corporation, No.
22 C18-0321JLR (W.D. Wash.), this could present the scenario where all eight IPR petitions that
relate to the patents-at-issue in this case have been resolved, but a stay would continue because
there are unresolved IPR petitions that relate only to SRC Labs, LLC v. Microsoft Corporation,
No. C18-0321JLR (W.D. Wash.). This scenario changes the calculus because maintaining a stay
in this case could no longer simplify the court proceedings—all the IPR petitions that relate to
this case will have already been resolved. Therefore, at this time, the court declines to extend the
stay to these limits.